

**DRAFT**

**STATE ADVISORY COUNCIL ON THE  
EDUCATION OF CHILDREN WITH DISABILITIES**

**November 30, 2007  
Indiana Department of Education  
James Whitcomb Riley Conference Room  
Indianapolis, IN**

**ADVISORY COUNCIL MEMBERS PRESENT:**

B. Marra, G. Bates, R. Burden, C. Endres, K. Farrell, D. Geeslin, J. Hammond, C. H. Hansen, B. Henson, M. Johnson, B. Kirk, B. Lewis, G. McAloon, K. Mears, J. Nally, M. Ramos, C. Shearer, D. Schmidt, J. Swaim, S. Tilden

**ADVISORY COUNCIL MEMBERS NOT PRESENT:**

D. Downer, R. Kirby, J. Swiss, T. Wyatt, S. Yoder

**INDIANA DEPARTMENT OF EDUCATION (DEL) STAFF PRESENT:**

K. Bassett, N. Brahm, N. Confer, S. Knoth, B. Reynolds, T. Rinehart, D. Kempson, A. Snobarger

**VISITORS:**

Tom Adams (Representing ICASE); Alexandra Curlin (Attorney); Liz Freeman Floyd (Autism Coalition); Lynn Gosser (Representing ICASE); Teresa Hall (Deaf Community Services); Kyle Jones (Attorney); Margaret Jones (Parent/Attorney); Lois Lord Nelson (RAISE); Patricia Pierce (NISEC); Rylin Rodger (Parent); Grayson Swaim (Student); Pam Wright (Representing ICASE)

**INTERPRETERS:**

Amy Evans  
Teresa Hall

**MEETING**

D. Schmidt opened the meeting at 9:05 a.m.

D. Geeslin stated that he would like to remove his statement on page eight (8) at 511 IAC 7-36-4 Extended School Year: "D. Geeslin stated that he prefers to focus on the school refocusing on the school signing on a daily basis".

R. Burden moved to accept the minutes as amended. C. Endres seconded. Motion carried.

The minutes from the November 2, 2007 meeting was approved with amendments.

### **Article 7 Revisions Comments from Public**

Pam Wright, president of ICASE, addressed the Council with concerns regarding the proposed language for Article 7 concerning the 3-12 age range, the verbal request for evaluation, and the evaluation timelines. P. Wright said that after the last meeting, ICASE received many comments with regard to the transition age. She wanted to assure the Council that ICASE is not opposed to the age 14 planning for transition.

L. Gosser, representing ICASE, addressed concerns with regard to services plans and extended schools year. She also added that if the Council goes beyond Federal language ICASE would like to see a fiscal impact analysis for schools.

T. Adams, past president of ICASE, stated that ICASE commends the Council on the language used at 511 IAC 7-25-3 for providing the supports staff might need in order to implement students' IEPs. However, he expressed that (3) appears to be redundant. T. Adams also discussed concerns regarding early childhood caseload and hours of service. ICASE would like to maintain the hours of service and keep the language as it is. T. Adams stated that on behalf of ICASE, he would like to thank the Council for all of their work on the proposed Article 7.

K. Farrell asked L. Gosser for clarification with regard to nonpublic school language going "beyond" federal language. L. Gosser stated that it is specifically the language that dictates what must be in the service plan. B. Marra stated that he does not believe the Council has gone beyond federal language and drew the attention to the federal language at: 138(i), "meet the requirements of Sec. 300.320, or for a child ages three through five, meet the requirements of Sec. 300.323(b) with respect to the services provided." The reference to 320 is the "IEP" section.

A. Curlin, addressed the Council as a private attorney. She asked Council to reconsider the language at "change of placement". She also voiced concerns with regard to "prior written notice". She is especially concerned with the proposed language that speaks to physical location (and the link with obtaining written parental consent).

J. Hammond asked for clarification on location being 'tied' to change of placement.

K. Farrell said that the Council discussed prior written notice extensively prior to voting on the proposed language.

B. Kirk asked for clarification on the 'change of location'. B. Marra stated that this is not a topic on the agenda for today, but it is on the December agenda, and he asked that the Council hold their concerns until the December meeting to discuss this further.

## **Article 7 Revisions**

### **RULE 41 ELIGIBILITY CRITERIA**

#### **511 IAC 7-41-4: Deaf or hard of hearing**

D. Geeslin addressed the council regarding the proposed language as it is a reflection as to where the deaf community is now. He stated that he supports the language as written. He feels, however, that 'system' should be changed to spoken or signed language ~~systems because some use simultaneous systems.~~ He would like to recommend the language to be changed at Sec. 4(a)(3) to read: "students who are deaf or hard of hearing may use spoken language or sign language or a combination of spoken language and signed systems." ~~B. Kirk asked if at the Deaf School they teach spoken communication. He said that they do teach the children to be bilingual, but generally teach sign language. D. Geeslin stated that he is not just referring to the School for the Deaf he is referring to all schools. There is a variety of systems at different schools. He stated that he would be willing to discuss the Indiana School for the Deaf at a different time.~~ N. Brahm asked if sign language is a type of sign system. D. Geeslin stated that no, it is a form of language. It is 'American sign language'. If you went to a different country you would have to correspond in writing as sign language varies. K. Mears asked with regard to Spanish speaking students. D. Geeslin said that he feels it would be in any language. B. Marra said that throughout Article 7 there are references that would refer to different languages.

D. Geeslin also would like to emphasize he would like to change the language at 7-41-4(b)(3) to change to "expressive language skills". J. Swaim concurred.

B. Lewis moved to accept the language offered by the Division and D. Geeslin and to parallel the language at 511 IAC 7-41-5 Deaf-blind. J. Nally seconded.

18 Approved, 0 Opposed, 1 Abstention.

Motion carried.

#### **511 IAC 7-41-8: Language or speech impairment**

K. Farrell moved to accept the language as presented at 511 IAC 7-41-8. B. Henson seconded.

M. Johnson asked if 'organic cause' would be defined. B. Marra said that it is currently in Article 7 in subsection 3(b) but not defined. He stated that the division can add a definition to the rule.

18 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-42-56 Developing an individual education program; components and parent copy**

R. Burden asked for clarification to the amended language at 42-6. B. Marra stated that he went to the federal language from 320 and 324.

B. Lewis moved to accept the language as presented at 511 IAC 7-42-6. G. Bates seconded.

B. Lewis asked if support gives a broader term than technical assistance. N. Brahm indicated this it is already a requirement of the IEP.

17 Approved, 1 Opposed, 0 Abstentions.

Motion carried.

**RULE 42 DETERMINATION OF SPECIAL EDUCATION SERVICES**

**511 IAC 7-42-89: Review and revision of the IEP**

N. Brahm discussed proposed amendments.

J. Hammond moved to accept the amended language at 511 IAC 7-42-9. Seconded by G. Bates.

K. Farrell called for the question.

R. Burden asked for clarification at (e)(2).

B. Lewis asked if the Council is voting on a format change. N. Brahm said that it is only the numbers that have changed.

18 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-42-910: Least restrictive environment and delivery of special education and related services**

N. Brahm discussed the changes that Council suggested previously.

B. Lewis motioned to accept language as presented at 511 IAC 7-42-10. B Henson seconded.

17 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-42-11: Instruction for student at student's home or alternative setting**

C. Endres moved to accept the language as presented at 511 IAC 7-42-11. C. Shearer seconded.

N. Brahm indicated that the concern was raised about convening every 60 instructional days. B. Henson indicated that she thinks it needs to stay in. B. Kirk and C. Shearer concurred. B. Lewis asked how this was separated from alternative schools. C. Endres explained that an alternative school has a school number and several parameters which must be met, whereas an alternative placement is a physical setting that does not have those codified requirements. N. Brahm asked whether it should state a "neutral site" or "non-homebound setting". R. Burden stated he was concerned about the rigor of instruction provided via homebound. Discussion ensued as to the reasons for homebound instruction and the length of instruction.

K. Farrell called for the vote.

18 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-42-112: Instruction for students with injuries and temporary or chronic illnesses**

N. Brahm explained that the reason this is included in Article 7 is because it speaks to all students, not just students with disabilities. It could be a student with a temporary or chronic illnesses or injuries that may require homebound instruction. It also provides a means for schools to receive reimbursement for providing homebound instruction to students who have a temporary issues that prevent them from attending school.

B. Henson moved to accept the language as presented at 511 IAC 7-42-11. R. Burden seconded.

18 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-42-4213: Nonpublic school or facility placements by public Agencies**

R. Burden moved to accept the language as presented at 511 IAC 7-42-11. Steve Tilden seconded.

18 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-42-4314: Transportation for students in public or private residential placements.**

K. Mears moved to accept the language as presented at 511 IAC 7-42-14. G. Bates seconded.

18 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**RULE 43 RELATED SERVICES; TRANSITIONS; TRANSFER OF RIGHTS**

**511 IAC 7-43-1: Related services**

K. Farrell asked how 'licensed school nurse' was defined. N. Brahm said that it is under the auspice of the Division of Professional Standards.

K. Farrell moved to accept the language as presented at 511 IAC 7-43-1. K. Mears seconded.

18 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-43-2: Transition from early intervention services (Part C) to early childhood special education (Part B)**

J. Hammond moved to accept the language as presented at 511 IAC 7-43-1. S. Tilden seconded.

15 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-43-3: Review of transition age students**

K. Farrell moved to accept the language as presented at 511 IAC 7-43-3. D. Geeslin seconded.

17 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-43-4: Transition individualized education program**

B. Marra said that the Department is very supportive of this language.

K. Mears moved to accept the language as presented at 511 IAC 7-42-11. C. Shearer seconded.

17 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-43-5: Transfer of rights to students**

B. Marra stated that this rule would be held until the next meeting.

**511 IAC 7-43-6: Appointment of an educational representative**

B. Marra stated that this rule would be held until the next meeting.

**511 IAC 7-43-7: Summary of performance**

K. Farrell indicated that she feels that this language is going beyond federal requirements when it is already address in part, in the general code. The principal is supposed to have an exit interview with the student (if the student is available). She would like to recommend removing (a)(4). S. Tilden concurred with K. Farrell. B. Marra stated that he would like to present a version of Article 7 to the State Board that truly reflects where the Council believes it is in the best interest of the children to go beyond federal regulations.

K. Farrell moved to accept the language at 511 IAC 7-43-7 amendment to remove item (a)(4). S. Tilden seconded.

11 in favor, 6 Opposed, 0 Abstentions.

Motion defeated.

C. Endres motioned to accept the language as presented at 511 IAC 7-43-7. C. Shearer seconded.

8 Approved, 9 Opposed, 0 Abstentions.

Motion defeated.

B. Marra suggested adding a new (b) to subsection (4) to read: A summary of performance 'may' be provided during the exit interview when a student withdraws from high school ~~after and exit interview is conducted~~ and the student's parent and principal consent to the withdrawal as specified in IC 20-33-2-28.5(c).

K. Mears moved to accept the language with amendments. S. Tilden seconded.

17 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

## **RULE 36 GENERAL ADMINISTRATION OF PROGRAMS**

### **511 IAC 7-36-5: Early Childhood**

B. Lewis moved to accept the language as presented at 511 IAC 7-36-5. J. Nally seconded.

14 Approved, 1 Opposed, 0 Abstentions.

Motion carried.

## **RULE 44 DISCIPLINE PROCEDURES**

### **511 IAC 7-44-1: Removals in general**

K. Farrell moved to accept the language as presented at 511 IAC 7-44-1. J. Nally seconded.

15 Approved, 0 Opposed, 1 Abstention.

Motion carried.

### **511 IAC 7-44-2: Disciplinary change of placement**



J. Hammond moved to accept the language as presented at 511 IAC 7-44-2. G. McAloon seconded.

K. Farrell asked if the language at subsection (c) was from the federal language. N. Brahm said yes.

15 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-44-3: Removals that do not result in a change of placement**

B. Lewis moved to accept the language as presented 511 IAC 7-44-3. K. Mears seconded.

15 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-44-4: Removals that result in a change of placement**

D. Geeslin moved to accept the language as presented at 511 IAC 7-44-4. G. Bates seconded.

16 Approved, 1 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-44-5: Manifestation determinations**

M. Johnson moved to accept the language as presented at 511 IAC 7-44-5. K. Farrell seconded.

16 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-44-6: IAES; weapons, drugs, and serious bodily injury**

K. Farrell moved to accept the language as presented at 511 IAC 7-44-6. J. Hammond seconded.

16 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-44-7: Substantial likelihood of injury to student or others**

M. Johnson moved to accept the language as presented at 511 IAC 7-44-7. S. Tilden seconded.

16 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-44-8: Placement of student during due process hearings or appeals of disciplinary action**

K. Farrell moved to accept the language as presented at 511 IAC 7-44-8. M. Johnson seconded.

16 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-44-9: Protections for students not yet eligible for special education and related services**

K. Farrell moved to accept the language as presented at 511 IAC 7-44-9. D. Geeslin seconded.

R. Burden asked for clarification as to 'oral request' at the time of evaluation, which was not voted on today. N. Brahm said that it is currently in Article 7 but it will be discussed further at the December meeting. Discussion ensued regarding verbal and written request. B. Marra addressed 511 IAC 7-40-4.

14 Approved, 1 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-44-10: Referral to law enforcement and judicial authorities**

D. Geeslin moved to accept the language as presented 511 IAC 7-44-10. J. Hammond seconded.

15 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**RULE 45 COMPLAINTS, MEDIATION, AND DUE PROCESS PROCEDURES**

**511 IAC 7-45-1: Complaints**

N. Brahm noted the addition of (h) and (i).

M. Johnson moved to accept the language as presented at 511 IAC 7-45-1. J. Hammond seconded.

J. Hammond had concerns with the twenty (20) day timeline for mediation. B. Marra said that if the timeline for mediation is longer than 20 days, then parents may not want to use mediation as a form of resolution because it may take longer than the complaint process, which is sixty (60) days. S. Tilden concurred with B. Marra, but had concern with the timeline being used to set up the mediation. K. Bassett explained the process of mediation and the new complaint timelines. R. Burden asked whether the school may initiate a mediation proceeding. B. Marra stated that the use of mediation to resolve a complaint can only be utilized if the complainant is a parent. R. Burden had concerns as to the assurances that mediation is going to resolve the issues. S. Tilden addressed R. Burden's concerns. K. Bassett addressed the Council and pointed out that the use of mediation to resolve a complaint is voluntary and mediation can only be utilized if both parties agree to mediate. K. Bassett added that a mediation agreement is a legally binding document. S. Tilden concurred.

13 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

#### **511 IAC 7-45-2: Mediation**

J. Nally stated he would oppose the language as DOC feels that there should not be a timeline on mediation. C. Endres asked what happens to the student while mediation is in process. B. Marra said you would follow the current IEP.

M. Johnson moved to accept the language as presented at 511 IAC 7-45-2. D. Geeslin seconded.

13 Approved, 0 Opposed, 0 Abstentions.

Motion Carried.

#### **511 IAC 7-45-3: Due Process hearing requests**

N. Brahm stated that two things were removed from the language previously reviewed by Council. It was more closely aligned with the federal language in this manner. Request for due process through e-mail was also removed due to student confidentiality.

K. Farrell moved to accept the language as presented at 511 IAC 45-3. M. Johnson seconded.

15 Approved, 0 Opposed, 0 Abstentions.  
Motion Carried

**511 IAC 7-45-4: Sufficiency of the request for a due process hearing**

J. Hammond moved to accept the language as presented 511IAC 7-45-4. G. McAloon seconded.

15 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-45-5: Responding to the request for a due process hearing**

G. Bates moved to accept the language as presented 511 IAC 7-45-5. J. Nally seconded.

15 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-45-6: Resolution meeting**

N. Brahm referred to suggested changes that if the resolution agreement was to be “voided” (within 3 days after agreement) they would need to notify the other party in writing that they were going to void the resolution agreement. The Division added language to address this concept.

M. Johnson moved to accept the language as presented at 511 IAC 7-45-6. K. Mears seconded.

15 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-45-7: Conducting the hearing**

M. Johnson moved to accept the language as presented at 511 IAC 7-45-7. K. Farrell seconded.

15 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-45-8: Independent hearing officer qualifications**

N. Brahm noted the amendment at (a)(4) that refers to a hearing officer being trained in due process hearing procedures. She amended the language to align with the federal language. B. Marra stated that this is status quo for the Division.

D. Geeslin moved to accept the language as presented 511 IAC 7-45-8. G. Bates seconded.

15 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

#### **511 IAC 7-45-9: Due process hearing appeals**

N. Brahma referred to the amendments to the rule.

K. Farrell moved to accept the language as presented. M. Johnson seconded.

R. Burden had concerns that he has heard that an Appeals Board is an additional step and additional costs are incurred. He added that comments have been made that the appeal hearings were not open to oral argument. B. Marra stated that the majority of states have gone to a one tiered system. N. Confer stated that when she did research on this topic for a paper she wrote in law school, it was fewer than 10 states that have a two-tiered due process system. R. Burden stated that additional concerns were that the Appeal Board often upholds the hearing officer's decision.

C. Endres said that the appeals process is an option that will be of less cost than going to federal court to appeal a hearing decision. She expressed concern that we may be disenfranchising less affluent parents by removing the two-tiered system.

14 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

#### **511 IAC 7-45-10: Expedited due process hearings and appeals**

N. Brahm explained the changes to the language.

M. Johnson moved to accept the language as presented at 511 IAC 7-45-10. K. Mears seconded.

14 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**511 IAC 7-45-11: Attorneys' fees**

M. Johnson moved to accept the language as presented at 511 IAC 7-45-11. J. Hammond seconded.

15 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**RULE 46 CHILD COUNT AND DATA COLLECTION**

**511 IAC 7-46-1: Federal child count procedures**

**511 IAC 7-46-2: State child count procedures**

**511 IAC 7-46-3: State preschool child count procedures**

**511 IAC 7-46-4: Data collection**

B. Marra explained Rule 46 to the Council.

J. Nally moved to accept Rule 46 as presented. A member of the Council seconded.

15 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

**RULE 47 STATE FUNDING FOR EXCESS COSTS**

**511 IAC 7-47-1: Application from school corporation of legal settlement or charter school**

**511 IAC 7-47-2: Appeal from denial of application**

B. Marra explained Rule 47 to the Council.

C. Shearer moved to accept Rule 47 as presented at 511 IAC 7-47-1 and 511 IAC 7-47-2. M. Johnson seconded.

C. Shearer stated that she feels that this will have a very big impact on the schools. K. Farrell asked if a school goes forward with an application and is denied will the Division assist the school in revising their application to resubmit. B. Marra said yes. K. Farrell indicated that she understood we have fewer numbers of students being served through this option. B. Marra said there are fewer and in his recollection there has only been one application denied this year. B. Kirk asked for clarification on court ordered placement.

15 Approved, 0 Opposed, 0 Abstentions.

Motion carried.

### **Article 7 Revisions Comments from Public**

Pat Pierce asked if the rules that were going to be discussed at the next meeting could be put online or e-mailed prior to the meeting.

### **BUSINESS**

B. Kirk requested that a clean copy be sent by U.S. Mail. D. Geeslin concurred.

J. Nally moved to adjourn. C. Endres seconded.

Meeting adjourned at 3:15 p.m.